IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 310 of 1995

in

SPECIAL CIVIL APPLICATION No 4133 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANKLIYARA GROUP (JUTH) GRAM PANCHAYAT
Versus
STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 310 of 1995
MR CL SONI for Appellant No.
MR PR ABICHANDANI AGP for Respondent No. 1-3
MR AJ PATEL for Respondent No. 4
RULE SERVED for Respondent No. 5-7

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 29/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The Mamlatdar, Kheralu-present respondent No.3, by his order dated 9.1.1984 declared 196, 28 Acre 8 Gunthas and 11 Acres 2 Gunthas of Survey No.73 of village Sadrasan to be private ownership of the present respondent No.4. This order passed by the Mamlatdar on 9.1.1984 came to the notice of the Deputy Collector, Patan, who examined the case and forwarded for review. Thereupon, the said case was registered and parties were informed by registered post A.D. In response to that the present respondent No.4 appeared through his advocate before the Collector on 5.7.1988 and prayed for time. Accordingly, matter was adjourned to 19.9.1988. However, in spite of due service of notice neither present respondent No.4 nor his advocate remained present before the Collector on 19.9.1988. Therefore, after perusing the record of the Mamlatdar, learned Collector came to the conclusion that it was Government land, therefore, quashed and set aside the order of Mamlatdar. However, on revision petition filed earlier by the respondent No.4-Jagirdar, the learned Tribunal remanded the case to the Mamlatdar Kheralu, who after hearing the respondent No.4-Jagirdar and considering the evidence on record decided the case against the Government. The said order of Mamlatdar was quashed and set aside by order dated 18.2.1988 (Annexure-A to the petition) by the Collector, Mehsana in Appeal / Revision No.8 of 1980, which was challenged by the present respondent No.4 before the Tribunal in the Revision Application No.303 of 1989. This time the learned Tribunal vide its impugned judgment and award dated 30.9.1994 allowed the revision not on merits, but on the ground of delay in exercising his revisional powers by the Collector as according to him the learned Collector ought not to have exercised his power after a period of more than 4 years and 5 months. Hence, on relying upon the judgment in case of Bhagwanji Bawanji Patel v. State of Gujarat reported in AIR 1971 GUJARAT 64, the learned Tribunal held that there was an unreasonable delay and on this ground the order passed by the Collector was quashed and set aside.

#. It may be stated that before the Collector as well as the learned Tribunal the present appellant-Panchayat was

not party. It claims that about 300 acres of Government land vested with the Panchayat was illegally declared to be the ownership of the present respondent No.4-Jagirdar by the learned Mamlatdar without hearing the Panchayat. It was a goucher land, therefore, respondent No.4 cannot become the owner of the said land. Though it was not a party either before the Collector or before the Mamlatdar, it had preferred to challenge the impugned judgment and order passed by the learned Tribunal (Annexure-B) quashing and setting aside the judgment and order at Annexure-A passed by the Collector by way of writ petition i.e. Special Civil Application No.4133 of 1995, which was dismissed by the learned Single Judge by his judgment and order dated 20.6.1999. Hence, this appeal.

#. It is stated at the bar by learned counsel Mr.Soni appearing for the appellant-Panchayat that in view of the interim orders passed on Civil Application filed in this appeal, the appellant-Panchayat is still in the possession of the land in question.

#. We had asked Mr.Abichandani, learned AGP as to whether State Government had challenged the impugned judgment and order dated 30.9.1994 passed by the learned Tribunal before this court by way of writ petition or not. But, learned AGP, Mr.Abichandani was not in a position to make definite statement in the matter. However, he received written para-wise remarks, which shows that the Government was considering to challenge the impugned order passed by the learned Tribunal, but neither Mr.P.R.Abichandani nor Mr.Patel for respondent No.4 were in a position to state as to whether the impugned order passed by the Tribunal was challenged before this court by way of writ petition or not. Be that as it may.

#. We find from the order passed by the learned Tribunal that in the second round of litigation in Revision Application No.303 of 1989, for the first time, the learned Tribunal considered the question regarding undue delay on the part of the Collector in exercising his suo motu power under Section 201 of the Bombay Land Revenue Code. When the matter had come up before the learned Tribunal on earlier occasion against the order passed by the Collector, the learned Tribunal remanded the matter to the Mamlatdar to decide it on merits. In that view of the matter, we are of the considered opinion that it was not open to the learned Tribunal to quash and set aside the subsequent order (Annexure-A) passed by the learned Collector on the ground of delay and latches. We must

appreciate the statement made at the Bar by learned counsel Mr.A.J.Patel for respondent No.4 that he would not mind in going back to the Tribunal to get his revision decided on merits. However, he has a strong objection about the locus standi of the appellant-Panchayat.

#. When the appellant-Panchayat was not party to the proceedings before the Collector or before the Tribunal, then in our considered opinion it could not have challenged the impugned order passed by the Tribunal straightaway by way of the writ petition. If it was aggrieved by the order of the Tribunal, then at first instance it should have applied before the learned Tribunal for passing appropriate orders. In any case when the matter is to be remanded to the Tribunal for its adjudication on merits, then we are of the considered opinion that the appellant-Panchayat has to first make appropriate application before the learned Tribunal for impleading itself as a party respondent as it claims to be in possession of the land in question, which is Government land and vested in it.

#. Before parting, we must state that much water has flown after the judgment reported in AIR 1971 GUJARAT 64. After considering the judgment of the apex court in AIR 1999 SC 1351, Full Bench of Rajasthan High Court in case of Chiman Lal v. State of Rajasthan held "When no period of limitation is provided wither under the Act or the Rules then the same has to be exercised within a reasonable time and reasonable time will depend upon the facts and circumstances of each case". It is further held "It is not the function of the Court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The Courts only interpret law and do not make laws. Personal view of the Judges presiding the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature .....". It is further held in Chiman Lal's case (supra) "When no period of limitation is provided then the same has to be exercised within a reasonable time and that will depend upon facts and circumstances of each case like; (i) when there is fraud played by the parties; (ii) the orders are obtained by misrepresentation or collusion with public officers by the private parties; (iii) Orders are against the public interest; (iv) the orders are passed by the authorities who have no jurisdiction; (v) the orders are passed in clear violation of rules or the provisions of the Act by the authorities, and (vi) Void orders or the orders are

void ab initio being against the public policy or otherwise".

#. When it was conceded by the learned counsel Mr.Patel for remanding the matter back to the Tribunal, then the impugned order at Annexure-B passed by the learned Tribunal has to be quashed and accordingly it is quashed and set aside and the learned Tribunal is now directed to decide the revision application on merits strictly in accordance with law. On the matter being remanded to the learned Tribunal, the appellant-Panchayat is directed to apply before the learned Tribunal for impleading it as party respondent. It would be open to the present respondent No.4 to raise all objections, including impleading the present appellant as party respondent. The learned Tribunal will consider the said application filed by the appellant-Panchayat strictly in accordance with law and pass appropriate order on it and if it comes to the conclusion that the Panchayat is necessary party, then after hearing it, the revision application be decided in accordance with law.

#. With these observations, this appeal stands allowed. Status quo to continue till then.

(B.J.Shethna, J.)

(M.C.Patel, J.)

*Pvv